

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 23rd day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. BARRINGTON D. PARKER,
Circuit Judges.

Feng Lin,

Petitioner,

v.

No. 05-3858-ag
NAC

Alberto R. Gonzales,

Respondents.

FOR PETITIONER: Karen Jaffe, New York, New York.

FOR RESPONDENT: Reginald I. Lloyd, United States Attorney, Jennifer Aldrich,
Assistant United States Attorney, Columbia, South Carolina.

Petition for review from a final decision of the Board of Immigration Appeals.

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3 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
4 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
5 petition for review is GRANTED and the case REMANDED to the BIA.
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9 Feng Lin, through counsel, petitions for review of the BIA decision summarily affirming
10 Immigration Judge (“IJ”) George T. Chew’s decision denying his application for asylum,
11 withholding of removal, and relief under the Convention Against Torture (“CAT”). We assume
12 the parties’ familiarity with the underlying facts and procedural history of the case.

13 Where, as here, the BIA summarily affirms the decision of the IJ without issuing an
14 opinion, *see* 8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency
15 determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). We review the agency’s
16 factual findings, including adverse credibility determinations, under the substantial evidence
17 standard. 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d
18 Cir. 2004). However, we will vacate and remand for new findings if the agency’s reasoning or its
19 fact-finding process was sufficiently flawed. *Cao He Lin v. U.S. Dep’t of Justice*, 428 F.3d 395,
20 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir. 2004).

21 In the instant case, we conclude that the record does not support the IJ’s adverse
22 credibility finding. The IJ based her finding, in part, on Petitioner’s meandering and confused
23 answers. But while the IJ stated that Lin was “not responsive at all” regarding the timing of his
24 wife’s scheduled visits to the planning office for examination, the record suggests that Lin
25 attempted to respond in a situation of severe language difficulties. The IJ also relied on a
26 supposed discrepancy between the date that Petitioner gave and the date his wife mentioned in
27 her letter with respect to her first abortion. We believe, however, that the two sources of

1 testimony may in fact have been consistent and that any alleged difference is sufficiently minor
2 that it does not undercut Lin's basic claim that his wife suffered a forced abortion after returning
3 to her hometown in October 1994. The IJ additionally cited an inconsistency with respect to the
4 date on which Petitioner discovered his wife's second pregnancy. Lin sought to explain this
5 apparent inconsistency in his testimony. The IJ did not need to accept his explanation, of course,
6 but this inconsistency is at best peripheral and can only bear a limited weight in a general
7 credibility finding.

8 Most significantly, the IJ made no finding as to Petitioner's claim that his wife again
9 became pregnant and suffered a forced abortion in 2001. The IJ merely stated Lin's untraversed
10 assertion that in 2001 "his wife became pregnant" and "then she was, again, aborted." This
11 second, allegedly forced abortion is enough to establish past persecution, and the record does not,
12 at this time, support an adverse credibility finding sufficiently broad to negate this basis for
13 relief.

14 For the foregoing reasons, the petition for review is GRANTED, the final order of
15 removal is VACATED, and the case is REMANDED to the Board for further proceedings
16 consistent with this opinion. Having completed our review, any stay of removal that the Court
17 previously granted in this petition is VACATED, and any pending motion for a stay of removal
18 in this petition is DENIED as moot.

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20 FOR THE COURT:
21 Roseann B. MacKechnie, Clerk
22
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By: _____